

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK J. ARABIA, JR.
and
DANIELLE E. ARABIA

Appeal No. 97-3297
Application 08/390,973¹

ON BRIEF

Before ABRAMS, FRANKFORT and NASE, **Administrative Patent Judges**.
ABRAMS, **Administrative Patent Judge**.

¹ Application for patent filed February 21, 1995.

Appeal No. 97-3297
Application 08/390,973

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 1-3, which constitute all of the claims of record in the application.

The appellants' invention is directed to an improvement in vehicle latch assemblies. The subject matter before us on appeal is illustrated by reference to claim 1, which reads as follows:

1. In a vehicle latch assembly of the type in which a molded plastic operating lever is shifted by an operating rod having a circumferential groove thereon, the improvement comprising:

said operating lever having a bushing portion integrally molded in one piece continuous molded together construction with the molded plastic lever and having a bore for receiving the rod, retaining fingers molded integral with the bushing portion and projecting into the bore to grip the circumferential groove of the rod, a frangible web molded integral in connection between the bushing portion and the lever so that the lever pre-determinately fractures at the frangible web in the event of excessive force application to the lever upon attempted disassembly of the rod from the bushing.

THE REFERENCES

The references relied upon by the examiner to support the final rejection are:

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McClure	4,299,417	Nov. 10, 1981
Nix et al. (Nix)	4,750,878	June 14, 1988

THE REJECTION

Claims 1-3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nix in view of McClure.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellants are set forth in the Brief and the Reply Brief.

OPINION

In rejecting claims under 35 U.S.C. §103, the examiner bears the initial burden of presenting a ***prima facie*** case of obviousness (***see In re Rijckaert***, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); ***In re Oetiker***, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (***see In re Bell***, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)).

All three of the claims before us include a molded plastic operating lever having a bushing portion "integrally molded in one piece continuous molded together construction with the molded plastic lever and having a bore for receiving the rod, retaining fingers molded integral with the bushing portion" and "a frangible web molded integral in connection between the bushing portion and the lever." In other words, the basic construction set forth in the claims requires that the operating lever, the bushing portion, the rod retaining fingers and the frangible web be molded together into an integral one piece continuous structure.

In Nix, a retainer bushing 10 is installed into a bore in pushrod 35 by "pressing" (column 6, line 18). There is nothing to suggest that these components are otherwise attached together, much less that they are integrally molded in a continuous structure, as is required by the appellants' claims. In fact, in the preferred embodiment, Nix indicates that they are of different materials (note the cross-hatching in the drawings and see column 3, lines 40-45). The examiner recognizes this,

and sets forth two alternative theories. The first is that the term "integral" is "sufficiently broad to embrace constructions united by such means as fastening and welding" (Answer, page 5). This fails at the outset, however, for it is clear that in Nix "such means as fastening and welding" have not been disclosed or taught. The second theory is stated as follows:

Once the lever and bushing are connected they perform the exact same function as applicant's [*sic*] claimed invention and therefore, creating an integral, one piece lever and bushing is an obvious modification.

Essentially, it is the examiner's position here that one of ordinary skill in the art would have found it *prima facie* obvious to so modify the Nix device. In the absence of evidence or compelling argument in support thereof, however, we are not persuaded that this would have been the case.²

² The mere fact that the prior art structure *could* be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. *See In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Thus, we agree with the appellants that Nix fails to disclose or teach the required "continuous molded together construction" required by the claims.

With regard to the claim requirement that there be "a frangible web molded integral in connection between the bushing portion and the lever," the examiner again sets forth alternative theories, which emerge from the following statement:

Assuming arguendo that it would be unreasonable in Nix '878 to conclude broadly that there is a frangible web portion at a reduced section [i]t would have been obvious . . . to Modify Nix '878 in view of McClure '417 in order to sever a part of the bushing in order to indicate unauthorized tampering" (Answer, page 4).

This recitation, considered with the other comments of the examiner on this subject, would seem to indicate first that the examiner believes feet 22 of the Nix bushing, which engage the groove in the installed control rod, are frangible portions, and second, that in any event to do so would have been obvious in view of McClure. The first theory is not supported by the Nix disclosure in that Nix does not explicitly establish that the feet are frangible, and that the reference discloses removing the rod and the bushing together, if need be (column 7, lines 35-41), with no thought given to fracturing any of the components. With

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regard to the second theory, McClure discloses a tamper-indicating seal having a necked portion which fractures if an attempt is made to remove the seal. We fail to perceive any teaching, suggestion or incentive in either Nix or McClure which would have led one of ordinary skill in the art to provide the feet in the Nix device with a frangible portion. To do so would be unnecessary in view of the fact that Nix already provides for the rod and the bushing to be removed together in another manner. It therefore is our conclusion that the combined teachings of Nix and McClure fail to establish a ***prima facie*** case of obviousness

with regard to the subject matter of the three claims. This being the case, the rejection cannot be sustained.

The decision of the examiner is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT

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CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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